

P-3122/C-93-1023 ORDER REJECTING SETTLEMENT AND REQUIRING FURTHER  
FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
Marshall Johnson  
Cynthia A. Kitlinski  
Dee Knaak

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Complaint Against Hertz  
Technologies

ISSUE DATE: August 15, 1994

DOCKET NO. P-3122/C-93-1023

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REQUIRING FURTHER FILINGS

**PROCEDURAL HISTORY**

In the fall of 1993 two Minnesota businesses, United Bankers' Bank and Conveyors, Inc., filed complaints with the Department of Public Service (the Department) against their former long distance carrier, Hertz Technologies. The businesses claimed Hertz had provided telephone service without a certificate of authority and had overcharged them for the service provided. United Bankers' Bank (the Bank) also claimed that Hertz's agent had induced the Bank to sign a contract for service by misrepresenting its cost in comparison with the cost of service from other long distance carriers.

On February 15, 1994 the Department filed a report and recommendation stating it believed the central issue was whether Hertz was or had been providing service without authority. The report stated the Company had provided service before its June 30, 1993 certification date and recommended referring the matter to the Office of the Attorney General for penalty proceedings.

On April 25, 1994 the Department and the Company filed a Settlement Agreement. Under the agreement the Company agreed to pay \$350 in lieu of penalties and to refund overcharges resulting from a two-month computer programming error. The Department agreed to recommend that the Commission take no further action against Hertz.

The Settlement Agreement came before the Commission on August 2, 1994. United Bankers' Bank appeared at the hearing and spoke against it, claiming its refund provisions did not adequately compensate the Bank for financial losses attributable to its reliance on misrepresentations made by Hertz's agent.

**FINDINGS AND CONCLUSIONS**

The Commission will reject the Settlement Agreement on the basis of insufficient information. Approving the Agreement would require the Commission to hold that "there has been no demonstration that further refunds to any Hertz customer would be in the public interest." The factual, legal, and policy bases for such a finding are unclear.

Neither complainant signed the Agreement. United Bankers' Bank clearly objects to it.

Conveyor, Inc.'s position is not documented in the record. The Bank also alleged at the hearing that Conveyors, Inc. received a more favorable financial settlement (forgiveness of two months' billings) than the Bank did.

The Commission will ask the Department to explain in more detail the factual basis of the Bank's complaint, the Department's reasons for concluding that no further refunds are in the public interest, the range of remedies available to the Commission for resolving these complaints, and its alternatives for dealing with any unauthorized provision of service by the Company.

### **ORDER**

1. The Settlement Agreement filed by the Department and the Company on April 25, 1994 is rejected.
2. The Department shall make an additional filing explaining in detail the factual basis of the Bank's complaint, the Department's reasons for concluding that no further refunds are in the public interest, the range of remedies available to the Commission for resolving these complaints, and the Commission's alternatives for dealing with any unauthorized provision of service by the Company.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)